

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN JOHN C. BOHLINGER**, on February 6,  
2003 at 310 P.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John C. Bohlinger, Chairman (R)  
Sen. John Esp, Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Brent R. Cromley (D)  
Sen. Jim Elliott (D)  
Sen. Kelly Gebhardt (R)  
Sen. Bill Glaser (R)  
Sen. Rick Laible (R)  
Sen. Jeff Mangan (D)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Phoebe Olson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion  
are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB293, 2/4/2003; SB 288, 2/4/2003;  
HB 238, 2/4/2003; HB94, 2/4/2003  
Executive Action: None

**HEARING ON SB 293**

**Sponsor:** SENATOR MIKE WHEAT, SD 14, Bozeman

**Proponents:**

Tim Davis, MT Smart Growth Coalition  
Dick Thweatt, Plan Helena  
Anne Hedges, MT Environmental Information Center  
Judy Smith, CALM

**Opponents:**

Jim Kembel, Montana Association of Realtors and Land Surveyors  
Don Allen, Granite, Powell, Anaconda Deer Lodge Counties  
John Prinkki, Carbon County

**Information:**

Alec Hansen, League of Cities and Towns  
Jim Edgcomb,

**Opening Statement by Sponsor:**

**SENATOR MIKE WHEAT, SD 14, Bozeman,** SB 293 is a county growth bill you should enjoy. He let the committee know there were amendments to the bill that had not been drafted but he would go through the bill as it would be amended. He explained on line one the definition of fast growing county would be struck. On page two, line six, the definition of populous county would be struck. On page three, line sixteen, all the information would be struck. On page four there would be some amendments he would talk about as they worked their way through the bill. He said this bill was designed to require the county and city governments to work together to develop these plans. On page four, line seventeen, the amendment would strike planning board and add city council within its planning jurisdiction, or a county commission within its planning jurisdiction. He said it would make it clear that it was the governing bodies of the city and county that would be designating these quality growth areas. At the top of page five, on line one subsection four, the language "must" would be struck and the word "may" would be inserted to make it clear that this is permissive and not mandatory. He said there may be other clean up amendments as well but he thought these were the heart of the amendments they would discuss in executive session. He maintained the heart of this bill was directed at those fast growing populous cities and counties, encouraging them to develop a twenty year plan on how the area would develop around the city

and in the county areas. It encourages them to develop this plan together, and to designate in these quality growth areas how they are going to plan for services in the development of those areas. He thought this was good legislation to send a message to these high growth areas that they should be planning, and being proactive. He submitted a letter to the committee from Alan Nicholson. **EXHIBIT(los26a01)**

**Proponents' Testimony:**

**Tim Davis, MT Smart Growth Coalition**, submitted written testimony **EXHIBIT(los26a02)**

**Dick Thweatt, Plan Helena** submitted written testimony **EXHIBIT(los26a03)**

**Anne Hedges, MT Environmental Information Center** said for years she had been hearing they were anti-growth. She spent the last four years participating in consensus council process' on growth issues. She said the first two years were spent addressing the sanitation and subdivision law, and they developed a bill last session that addressed a lot of concerns that had been addressed over the years. She claimed that from that group stemmed another group to address growth policy forum. She said they were talking about the problems in law dealing with growth management. She said the words they heard the most were predictability and incentives. She claimed there were no incentives for the people to do the right thing, and developers have no predictability, so they don't know what will be expected of them when they submit an application to build homes. She believed that was a problem that needed to be addressed. She expressed that they kept asking what kind of incentives people wanted in order for them to do the right thing and no ideas came back to them. She said this bill would give incentives for people to do the right thing. Planning and growth management all done in the negative, she expressed that this would say this is a good place to put people, it tells developers where they should build which gives them predictability. She thought this was a really good idea, and hoped they would support the bill.

**Judy Smith, Citizen Advocates for a Livable Missoula** said she was interested in the section that promoted county to county planning. She said those in Missoula and Ravalli County were talking about this. She asserted that Missoula felt the impact of a large number of cars coming into the community on a regular basis, and she knew Ravalli county wished they had an economy and those cars did not have to go to Missoula. She said the traffic did cause a lot of concerns. She said another concern was they

did not want house after house all they way through the Bitterroot, they wanted some green space. She said the idea of promoting a quality growth area would be a great idea. She said from her point of view, her county and city were working together, but she would love to see an incentive for counties to come together and plan. She encouraged the committee to pass the bill. She said if they had concerns they were very interested in talking to them on how to make the bill work for everyone.

**Opponents' Testimony:**

**Jim Kembel, Montana Association of Registered Land Surveyors,** said he had not seen the amendments so he was just there to let the committee know their concerns. First on page one line twenty six, currently the local governments are face with major expenses in trying to do a growth policy. It was hoped that at least some planning was done through comprehensive plans or an existing master plan, so those could be treated equally for now until local governments had time to do something. He said another concern was on page four, line 27. He took exception to people not having lots they could build on an acre if they so desire and could afford it. He maintained a density of that nature dictated statewide was wrong. He said he would appreciate the committee taking a look at that.

**Don Allen, Granite, Powell, Anaconda Deer Lodge Counties,** he said he had many questions about the bill. He thought the amendments might answer some of their concerns regarding the small counties. He said he reserved the right to examine the amendments to see if they would work. He said one of the problems was who would tell who what the right thing to do was. He said he was unsure what they meant on page five, line twenty three. He said he was worried what a quality growth area might look like. He assumed that new section three would tell you how to designate one. He said there were some unanswered questions on how this would effect small counties. He was also unsure of the funding issue.

**John Prinkki, Carbon County,** said they had discussed the bill, and they were in opposition of the bill because of the way it prioritizes TSEP funding. He maintained Carbon County was working on growth policy and they believed in quality growth. He said anytime they could find a way to better utilize public and private sector dollars to create better development and have better planning was a great idea, however they are concerned with this priority funding would divert TSEP funding from smaller counties that don't meet the requirements. He said they might change their minds after seeing the amendments, but at this time they did not favor the bill.

**Information:**

**Alec Hansen, League of Cities and Towns** said there were very good things about the bill. He said the amendments helped by making it permissive, but he said he was concerned about the ranking criteria for Treasure State Endowment Projects. He said in the draft of the bill he had, quality growth areas were in the second most important grading criteria. He thought his objections to the bill would go away if the criteria and the ranking were adjusted and quality growth areas moved down on the list. He said the whole idea was that there was not a lot of money in the TSEP and they needed to look at public health and affordability before they addressed some of these other concerns. Otherwise, he thought this was a good idea, and represented real progress in trying to encourage planning and quality growth.

**Jim Edgcomb, Manger of the Treasure State Endowment Program,** said he would be glad to answer questions.

**{Tape: 1; Side: B}**

**John Tubbs, Department of Natural Resources,** testimony was cut off the tape. I believe he made himself available to answer questions.

**Questions from Committee Members and Responses:**

**SENATOR CAROLYN SQUIRES,** asked Mrs. Smith asked if adjustments could be made with TSEP. She said it concerned her because her area benefitted from that.

**Judy Smith,** said it was her understanding the amendments were addressing it, and, if they were not, they would like to address that.

**SENATOR SQUIRES,** asked if Mr. Tubbs had seen the amendments, and if he thought they did what Judy Smith indicated.

**John Tubbs,** said he had not seen the amendments.

**Jim Edgcomb,** replied he had not seen the amendment either.

**SENATOR SQUIRES,** said she would like to hear from them personally after they had seen the amendments.

**SENATOR JIM ELLIOTTT,** asked in the TSEP ranking criteria there was priority status as was being intimated here.

**Jim Edgecomb**, said yes they had seven statutory priorities that they had to rank projects on. He said they started at 1,000 points and went down 100 points with each priority. So the one at the bottom would be 400 points and the one at the top is 1,000 points.

**SENATOR ELLIOTTT** stated priority projects higher up on the list are assigned higher points, and the agreement that putting the quality growth area up high would prejudice it favorably.

**Jim Edgecomb** said for instance where it was in the bill it would be a second priority and would receive 900 points. He said in these particular situations they were talking about it was either or. You either get points or you don't get points. There are five levels. You get so many points based on how urgent your health or safety problems are. He said in this particular case they would either get points or they wouldn't. With it up as high as it is, any project in a quality growth area would receive 900 points and any project not, would not receive any points. Obviously any project that was in a quality growth area would be a top project in their ranking list.

**SENATOR ELLIOTTT** said the fiscal note suggests that the priorities sought in this bill might be put in section one, sub three. He wondered how that would work.

**Jim Edgcomb** right now the fourth priority is a project that reflects substantial past efforts to ensure sound effective long term planning and management of public facilities in attempts to resolve infrastructure problems with local resources. They looked at things such as that. Whether or not they have adopted growth policies or master or comprehensive plans. Those sort of things give you more points in the scoring of that priority. Certainly they could take into account any project that is in a quality growth area that could receive more points under that particular priority.

**SENATOR ELLIOTTT** doesn't subsection d intimate or encompass the two recommendations in this bill.

**Jim Edgcomb** said yes it does. In present law they take into account quality growth areas in the scoring.

**SENATOR ELLIOTT** said it sounded to him like the amendments were not really needed.

**Jim Edgcomb** said it would simply be a matter of whether sufficient points are provided under that particular priority.

**SENATOR ELLIOTT** by including these in and of themselves would have a higher number of points.

**Jim Edgcomb** said that was correct, if there was stand alone priority it would be an either or situation. They would receive points or not. Obviously it puts them at a greater advantage if they are receiving the points, and others can't.

**SENATOR ELLIOTT**, said if projects were to meet the criteria of v and be awarded 900 points would it not also meet the criteria of e.

**Jim Edgcomb**, said he agreed with him, if the get the points under the quality growth area the would also help them in the scoring of e.

**SENATOR LAIBLE**, said as he read this he thought the only thing being done was to add a designation for a quality growth area in order to get priority listing for TESP programs.

**SENATOR WHEAT**, said he did not believe that was the intent. He said they would move the TSEP priority down if they had to. The intent was to develop legislation that encourages cities and counties to have these areas. In the process of doing that they will be faced with how to fund all these services; sewer, water, streets, etc. He did not think the intent was to leapfrog over smaller communities. The core of this was to encourage the planning in high growth areas. He said if they needed to amend the areas related to TSEP they would do that.

**SENATOR LAIBLE**, said if, in fact, this is not to have a priority listing within in the TSEP system, then what in the current growth policies can't we do for a community to create a growth policy.

**SENATOR WHEAT**, said what he thought Senator Laible was trying to say was "why can't we live within the definitions that already exist in the priority structure that is there." He said the effort here was to define high growth areas and give some consideration of that. He said it was not they were trying to leapfrog, it was an effort to give some recognition to the rapidly growing quality growth areas, as an incentive for people to try and develop this.

**SENATOR LAIBLE**, said it appeared the bill was not trying to leap frog the TCEP priority listing. He said there was language in statute already that allows communities to create a growth policy. He asked if he had a community that applied for TCEP

funds and they have a forty-percent growth over the last ten years would they automatically be eligible for some priority listing.

**Jim Edgcomb**, said there wasn't anything in the TSEP priorities that gives consideration to population or growth. He said it was oriented more towards health and safety issues.

**SENATOR LAIBLE**, said if you go down to d, it says "projects that reflect substantial past efforts to impure sound effective long term planning" if those communities under the current statutes tried to create a growth policy and were actively participating in a program to envision what their growth would be, would they not fall underneath that.

**Jim Edgcomb**, said he was correct they would receive more points under e if the had made those efforts.

**SENATOR BLACK**, asked if the amendment would make this clear, or eliminate the priority points they would get with TSEP for long range planning.

**SENATOR WHEAT**, said it would move it down on the priority scale so it did not interfere or prejudice smaller communities or projects that are out there that need to be completed because of public safety. He said the key was they were looking for language that gave incentives for cities and counties to have a quality growth plan. The goal would be to draft amendments that don't give these quality growth areas any kind of priority over these smaller communities.

**SENATOR ELLIOTT**, what is the ability of high growth areas to bond. Would it not be greater than that of a small town or rural areas that need TSEP grants.

**SENATOR WHEAT**, said that he would think so. He thought they would have greater ability to pay that bond off.

**SENATOR ELLIOTT**, said really he wanted anything to encourage communities to enter into this kind of growth policy, and TSEP was what you were using at this point. Is that correct.

**SENATOR WHEAT**, said that was correct. He maintained it was not his intent to disadvantage small communities. What they were trying to do was establish incentives for communities to go out and develop quality growth plans. He felt in the long run it was good policy and would save the taxpayers money.

**SENATOR ELLIOTT**, said if another were found that did not involve TSEP would that be satisfactory.

**SENATOR WHEAT**, said he thought so as long as these communities had an incentive to tie their long range planning to get funds to pay for the services they would eventually need.

**Closing by Sponsor:**

**SENATOR WHEAT**, said this bill sent a good message and was good public policy, and when everyone saw the amendments they would clear up alot.

**HEARING ON SB 288**

**Sponsor:** **SENATOR JEFF MANGAN, SD 23, Great Falls**

**Proponents:**

**Gordon Morris, MT Association of Counties**  
**Mike Grayson, Anaconda Deer Lodge County**  
**John Prinkki, Carbon County**

**Opponents:**

None

**Opening Statement by Sponsor:**

**SENATOR JEFF MANGAN, SD 23, Great Falls**, said every now and then a bill needed to come back to clarify intent. He said that is what he was doing here. Last session he carried the County Compensation Board bill. He said it allowed the County Compensation Board more local control and took out an antiquated system of how elected officials were paid. He said they did not clarify whether or not the County Compensation Board applied to consolidated governments. He said they had a decision to make whether or not the body felt it applied to consolidated governments or it does not apply. He maintained he drafted the bill to say it applied, however he had an amendment made up to say it did not apply for whatever the decision was of the committee. He said because intent was not clarified they needed to do that this session. Since both consolidated governments of Butte Silver Bow and Anaconda Deer Lodge, don't use it and don't want to. It would make sense to exclude them in the language and there was an amendment to do that. He said the second change he put in the bill, was to add two more taxpayers to the County Compensation Board. He said he had an amendment to make it

permissive from two to four for those rural governments that could have a difficult time locating four taxpayers to serve on the board. He said he would be glad to answer questions.

**Proponents' Testimony:**

**Gordon Morris, MT Association of Counties** said the intent of Senator Mangan was to clarify the situation relative to those consolidated governments. He said he would take the same approach and leave it up to the committee. He thought the two and up to four taxpayers was a good idea.

**{Tape: 2; Side: A}**

**Mike Grayson, Anaconda Deer Lodge County** said he was in favor of the amendment suggested to exclude Anaconda Deer Lodge from the Compensation Board requirement. He felt they were probably already excluded without an amendment. He said the reason he did not think it should apply was because the entire structure of the Compensation Board doesn't work when you have local governments like Butte or Anaconda. The law in front of you talks about having two county commissioners on the Compensation Board, and the two need to be in the majority of the way the board would rule. Most counties have three commissioners. Anaconda Deer Lodge has five commissioners, and he thought Butte Silver Bow had eleven or twelve. He said the structure did not work well for them. He pointed out that the Constitution says in Article 11, Section 5, Subsection 3, the charter provisions establishing executive legislative and administrative structure and organization are superior to statutory provisions. So, basically, in a charter form of government like Anaconda, they have specific provisions in the charter that say things like all boards of the county should be established by an ordinance from the county commission. They had several objections to it, and did not have the same positions as in other counties. He supported Senator Mangans amendment to specifically state it did not apply to consolidated charter forms of government.

**John Prinkki, Carbon County,** said he supported the amendments as well regarding the make up of the citizen membership. He said they had been working two years under these provisions, and he maintained both years they had only been able to get one taxpayer to sit on the board. He said this next year they did get two citizens, but it would be most difficult to get four. He said the option would work very well.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SENATOR LAIBLE**, asked the sponsor if this bill said you may have two taxpayers for two years and two for three years, and did this apply to consolidated governments or did it not.

**SENATOR MANGAN**, said the amendments would make it clear, when the committee made decisions. He said the biggest decisions they needed to make was the intent of the bill. We need to say this either applied to consolidated governments or it did not. He was suggesting that the amendment say it does not. He said amendment 28802 would accomplish that. **EXHIBIT(1os26a04)** He said you could have two, three, or four taxpaying members on the board. It would be up to the county to stagger those. He said it was really simple, just complicated the way he chose to do it.

**Closing by Sponsor:**

**SENATOR MANGAN** said he thought it was imperative to decide whether or not this applies to consolidated governments. He said there was an informal opinion written by the Attorney General. He said he also had a formal opinion from our chief legal officer that did apply because it was chartered when they created their charter. He maintained that did not matter if they placed it in the law that says it does not apply. Their intent would be clear and they would not have to worry about this issue.

**HEARING ON HB 238**

**Sponsor:** REPRESENTATIVE JOAN ANDERSEN, HD 23 Fromberg

**Proponents:**

**John Prinnki, Carbon County**  
**Mike Murphy, Lewis and Clark County Commissioner**  
**Gordon Morris, MT Association of Counties**

**Opponents:**

None

**Opening Statement by Sponsor:**

**REPRESENTATIVE JOAN ANDERSEN**, said this bill made a very small change in current law in the way that local governments can use water that they have obtained the lease and the right to use. She maintained that most of the bill was current law, but if you looked at page 2, subsection 9, that was where the change in the

law would be. She said this would allow local governments to use water that they have legally acquired the right to use for dust abatement, without giving thirty day notice. They could do it with 48 hours notice and the notice could be posted at the sight where the water was going to be taken. She said that was what the bill did. She said it gave local governments the ability to respond quickly to a problem. She reserved the right to close.

**Proponents' Testimony:**

**John Prinnki, Carbon County** said this bill came out of Carbon County as a result of legislation that was past in the 2001 legislature. Prior to that, local governments were borrowing water from their neighbors to do local dust control while they were doing road construction projects. He said there was no harm or foul. He said they used very little water to do this, and maintained that it was an insignificant impact on agriculture and farming. He did realize that this was a private property right and they needed to address that issue. The requirements for notification in the paper are very cumbersome and impractical. He said this allowed them to do a short term lease, post a notice for that lease at the point of diversion, and comply with the law. He said he supported the bill and hoped the committee would as well.

**Mike Murphy, MT Water Resources Association** said they went on record in support of the bill. He said it represented a fair compromise. He said it also provided a protection for the holders of the water rights.

**Gordon Morris, MT Association of Counties** said it was a MACO resolution, and he asked for their favorable consideration.

**Opponents' Testimony:**

None

**Informational Testimony:**

**Jack Stultz, Water Resources Division** said this was a bill that amends a statute created in 2001, and it was created on a collaborative effort among a number of groups. He said over the past two years it became clear it wasn't quite finely tuned enough to cover all the mechanisms that were in play in these activities and this bill was created to do that, and the amendments that were put on in the house even more precisely match the circumstances and it fits very well with his administration.

**Questions from Committee Members and Responses:**

None

**Closing by Sponsor:**

**REPRESENTATIVE ANDERSEN**, said she appreciated the people who came to support her. She said she was happy to carry this for the counties. She said it made sense for the counties, and allow them to respond to their constituents in a timely manner and with the appropriate protection for the people who own the water rights. She said if the bill passed out of committee Senator Story would carry it in the Senate.

**HEARING ON HB 94**

**Sponsor:** **REPRESENTATIVE BOB LAWSON, HD 80, Whitefish**

**Proponents:**

**Bob Vogel MT School Boards Association**  
**Gordon Morris, MT Association of Counties**  
**Terry Minnow, MEA - MFT**  
**John Shontz, Montana Newspaper Association**

**Opponents:**

None

**Opening Statement by Sponsor:**

**SENATOR BOB LAWSON, HD 80, Whitefish**, I bring for your consideration HB 94. An act revising and clarifying the public participation and notice requirements for open meetings, providing that an agenda for an open meeting must include an item allowing public comment on any public matter within the jurisdiction of the agency conducting the meeting; clarifying that an agency may not take action on any item discussed unless specific notice of that item is included on an agenda. The focus of the bill is on page one, lines 21-24. The agenda for a meeting, as defined in 2-3-202 must include an item allowing public comment on any public matter within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any item discussed unless specific notice of that item is included on an agenda. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212. So why should we do this. Some agencies now allow public comments as an agenda item and some do not. The definition of agency is found in 2-3-102. Agency means any board, bureau, commission, department, authority or officer of the state or local government authorized by law to make rules,

determine or contest cases or enter into contract except the legislature or any branch or committee thereof, the judicial or any committee thereof, the governor and the state militia. He said the historical background, MCA 2-3-101 it says the legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency. If you look at what the constitution actually says in section 8, the right of participation, the public has a right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agency prior to the final decision as may be provided by law. He said should you look at MCA 2-2-201, legislative intent - liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. He thought it was critical that the citizens of Montana have full right of public participation. It is important that we listen to and take into account the citizens thinking. Their input is really important. He thought we need to obtain and maintain citizens trust in government. He said they could do that with an open concept like this. He maintained there needed to be positive citizen perception of the government. He said this was a good common sense bill and further clarification of the intent of citizen participation, and the public is allowed to raise new issues and concerns. He said he did have a set of amendments to hand out, HB009401.alk **EXHIBIT (1os26a05)**. He explained what those amendments would do. He said the section would now read "the agenda for a meeting as defined in 2-3-202 must include an item allowing public comment on any public matter within the jurisdiction of the agency conduction the meeting, however the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter." He turned the hearing over to proponents and opponents, and reserved the right to close.

#### **Proponents' Testimony:**

**Bob Vogel, MT School Boards Association** rose in support of the bill. He said it was his privilege to work with Representative Lawson for quite some time on developing this and he believe it made some very good changes. He said the way school boards

operate under the open meeting law was very confusing. He said they always have struggled with ambiguity in the law and he thought this bill would clarify to the open meeting law. He did not know that it would make everything run smoothly all the time, but he thought it would help tremendously.

**Gordon Morris, MT Association of Counties** said this bill brought forth an important issue. He said they spent a lot of time working with county commissioners in terms of the need to have adopted public participation policy. He said one of the largest lawsuits the had settled arose because this particular policy was not in place in one county. He said what this bill was doing was very appropriate. He recommended favorable consideration.

**Terry Minnow, MEA - MFT** appeared in support of the bill. She thought the sponsor had done an excellent job of describing the intent and purpose of the bill. She maintained they agree it was a good bill and hoped they would pass it as amended.

**John Shontz, Montana Newspaper Association,** said he was also the freedom of information attorney for the FOI hotline for Montana. He reiterated that he received calls from mayors, school superintendents, school board members, lawyers, press, and private individuals asking about this. He said the Supreme Court in December rendered an opinion that was twenty-seven pages long that said stop trying to use technicalities to avoid opening your meetings. He thought this bill was a wonderful tool to embed that principle once again in statute. He maintained the public has a right to participate, view and be present. He thought the amendments clarified it even further. He strongly encouraged the committees support.

**Opponents' Testimony:**

None

**Informational Testimony:**

**Sarah Carlson, MT Association of Conservation Districts** said it was her pleasure to be there. She said there could be a potential problem. She said conservation districts issue what they call 310 permits for individuals who are going to engage in stream bed activities. She said the way she reads the bill they would not be able to act on a specific 310 permit if it came to the districts attention in a two week period from when they had noticed the meeting and when they actually have the meeting. For example districts usually only meet about once a month, so if they met on January 15, any information they received between the first and fifteenth would have to wait until February 15. Usually that wouldn't be a problem unless you have someone who has a tight

schedule with irrigation work or whatever. Or more importantly, if there was a violation out there somewhere and the district needed to take action somewhere to stop whatever was happening to protect natural resources. She was not sure they would be able to do that under this bill. She said she did not speak on the House side because she was trying to do some research, and she had come to the conclusion that it probably was applicable in this case. She said she would be happy to work with the sponsor to work out the concerns.

**{Tape: 2; Side: B}**

**Questions from Committee Members and Responses:**

**SENATOR ELLIOTT** asked John Shontz to respond to the testimony of Sarah Carlson.

**John Shontz** said the law currently states that a public entity can not make a decision on an issue unless that issue has been put on an agenda and the public allowed a period to comment on it prior to the decision being made. He thought, in that sense if, an agenda was published two weeks before a meeting and a permit comes in after that, the permit would have to wait until the next meeting. He did not think her issue had anything to do with this bill.

**SENATOR ELLIOTT**, said there were emergency situations when an extremely law abiding citizen would want to go to the conservation district and get a permit. For example; a bridge washes out or a bank caves in. That is an emergency. Would they be able to issue a temporary permit until a final permit could be issued.

**John Shontz**, replied they could. He said there were two mechanisms for that to occur. First, the statute that refers to response to emergency situations public notice is waived. Second, the state law that governs this arena do not specify that an agenda has to be published ex number of days before a meeting. He said the law said that the public has to have reasonable notice at what would be discussed at the meeting and what action would be taken at the meeting so they can come and comment and be present when the decision is made. He believed it could be 24 - 48 hours before the meeting.

**SENATOR ELLIOTT**, asked Sarah Carlson to respond to what John Shontz had said.

**Sarah Carlson** said she guessed the districts had used the two week time span because getting something on the radio and all

that would take money the districts did not have. She was unsure if giving 24 hours because you had it on the radio would be something the districts would be comfortable with.

**SENATOR ELLIOTT**, said personally he did not think it was difficult for a person to wait six weeks on a project that was previously planned. He said there were emergency provisions in place. He said he was a fan of the adage "a lack of planning on your part doesn't constitute an emergency on my part". He said given the fact that emergency situations would be covered it seems to him that the bases were covered.

**Sarah Carlson** said she would be inclined to agree with Senator Elliott. She said based on the conservation her concerns had been alleviated and she could pass that on to the districts.

**SENATOR ESP** said us he understood this it was mandating public forum. He asked Bob Vogel if a lot of school boards had not done that in the past.

**Bob Vogel** said he thought the problem had been more the opposite. He believed most school boards have been doing that, and they had been discouraging it because they did not think the open meeting law allowed it. He said someone standing up at a board meeting to talk about something that wasn't on the agenda was something they were resistant to get away from and this bill would in fact give them that right.

**SENATOR ESP** said then he was trying to discourage people from doing what this bill is now mandating.

**Bob Vogel** replied that it wasn't so much they were discouraging it but their interpretation at that time of the open meeting law said they shouldn't allow it.

**SENATOR ESP** asked if the MEA MFT negotiation meetings were open to the public.

**Terry Minnow** said she was unsure, but would find out.

**SENATOR ESP** asked if they had an agenda for a negotiating team meeting.

**Terry Minnow** replied she had not been in that field for a long time but would get that information for him.

**SENATOR MANGAN** asked about the cases they had in Great Falls where a student is facing disciplinary action. Are there rules or guidelines in place for this type of privacy interest.

**Bob Vogel** replied there are privacy rights, and that was the only exception to the open meeting laws he was aware of.

**SENATOR MANGAN** referred the same question to the sponsor.

**REPRESENTATIVE LAWSON** replied that was why the word public was inserted in committee. Originally it was left open with any matter and that is why the word public was inserted to take care of issues just like that.

**SENATOR MANGAN** assumed this related to county commissioners using a consent agenda to take care of many matters with one vote. He wondered if this could be interpreted to say that every item or every matter would have to be heard.

**Gordon Morris** said they were probably taking the term consent agenda differently. He said there is not a consent agenda, you have to publish notice and have your agenda so the public can know what items will be discussed by the board, and you have to afford the public an opportunity to speak.

**SENATOR MANGAN** said he thought in Cascade County he thought when they had a number of fairly trivial items, ie, warrants etc., they approve them all in one motion.

**Gordon Morris** said you would have a business portion of the agenda that is not considered to be a significant public interest and you can act on those.

**SENATOR CROMLEY** asked if they were holding a public meeting now under the scope of the bill.

**REPRESENTATIVE LAWSON** said that the definition excluded the legislature, under 2-3-102.

**Closing by Sponsor:**

**REPRESENTATIVE LAWSON** thanked the committee for a great hearing and asked for a do pass with the amendments. He said it gave good clarity. He said the citizens of Montana need to be heard. He asked the committee to find a floor sponsor if the bill passed out of committee.

**ADJOURNMENT**

Adjournment: 4:55 P.M.

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SEN. JOHN C. BOHLINGER, Chairman

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PHOEBE OLSON, Secretary

JB/PO

**EXHIBIT** (los26aad)